

## MEETING MINUTES CITY OF MILPITAS

**Minutes of:** Regular & Special Meeting of the Milpitas City Council  
**Date:** Tuesday, November 19, 2019  
**Time:** 6:00 PM Closed Session  
7:00 PM Open Session  
**Location:** Council Chambers, Milpitas City Hall,  
455 East Calaveras Blvd., Milpitas

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**CALL TO ORDER** Mayor Tran called the meeting to order at 6:03 PM. City Clerk Mary Lavelle called the roll.

**PRESENT:** Mayor Tran, Vice Mayor Dominguez, Councilmembers Montano, Nuñez and Phan

**ABSENT:** None

**CLOSED SESSION** City Council convened in Closed Session to discuss three matters listed on the agenda.

City Council convened at the dais for the Open Session regular agenda at 7:23 PM.

**ANNOUNCEMENT** City Attorney Chris Diaz stated there was no reportable action by the City Council, out of Closed Session.

**PLEDGE** Mayor Tran led all in the pledge of allegiance to the U.S. flag.

**SPECIAL MEETING** The Special City Council Meeting (separate agenda with one item) was called to order at 7:25 PM. City Clerk called the roll and all members were present.

**PG&E Update**

Mayor Tran called Deputy Public Works Director Elaine Marshall to the podium. She gave a summary of the structure and bankruptcy proceedings of Pacific Gas & Electric utility company. She also described the role of the California Public Utilities Commission (CPUC). Common themes emerged recently: customer interest, access to lower cost capital, and transparency.

Mayor Tran commented, thanked staff for the report, and stated he did not want the City to take any steps toward becoming a publicly owned utility until a clearer path was known.

Councilmember Nuñez knew that Silicon Valley Clean Energy (SVCE) and other agencies had been talking about this concept for months. He stated that time will come to decide while monitoring what had been going on, and knowing things were changing daily. He wanted to know from staff what action would be next.

Councilmember Montano mentioned the Cities Association Legislative Board, which wanted to go along with the City of San Jose recommending a restructuring of PG&E. She appreciated Mayor Liccardo's leadership on this idea.

Vice Mayor Dominguez agreed with Councilmember Montano. Several hearings were held on state legislation in Sacramento yesterday. She advocated for the City Council to consider joining the coalition being formed by Mayor Liccardo.

Councilmember Nuñez asked for guidance from the City Attorney and City Manager. City Attorney Diaz responded that the Council could explore joining the coalition as direction to staff, and come back with more information for the Council.

Councilmember Phan agreed with Mayor Tran, who'd expressed reservations about taking any action until he read more about the options on PG&E.

Councilmember Nuñez felt something could be brought back at one of the next regular meetings about the coalition being formed, with more details, so that City Council could then provide direction that staff was looking for.

Councilmember Montano asked for fact finding, on what public utilities were owned by the state or by the people, to compare benefits and the pros and cons. A majority of cities on the Boards of the two groups Mr. Nuñez mentioned had voted to join the coalition on PG&E.

#### Public Comments

Rob Means, resident, noted the cities of Palo Alto and Santa Clara were doing a better job than PG&E. He remarked this was not the first time that PG&E went bankrupt, noting past history. It was a balance of multiple factors.

Voltaire Montemayor, resident, spoke of saving everyone and for PG&E.

City Manager Steve McHarris commented how fast that this topic was placed on an agenda for the City Council, on very short notice. The Special Meeting Agenda went out late on Friday.

Mayor Tran thanked staff for the report and his fellow Councilmembers for comments provided, while staff agreed to continue monitoring this topic and to update the City Council.

#### ADJOURNMENT

The special meeting for this one item was adjourned by the Mayor at 7:56 PM.

#### INVOCATION

Vice Mayor Dominguez invited Pastor Richard Alvarez from the Cathedral of Faith in Milpitas, who gave an invocation to start the meeting. He honored the memory of Pastor Richard Mok, who had served over 30 years at the correctional institution chaplaincy and in the Milpitas community.

The Vice Mayor asked for moment of silence for Mr. Mok after the invocation.

#### PRESENTATION

Mayor Tran proclaimed, and Councilmembers presented, a proclamation for Sikh American Awareness and Appreciation Month in November 2019. It was accepted by Surinder Singh and Jaswant Singh Hothi from the Milpitas Sikh community, with many in attendance.

#### PUBLIC FORUM

Jim Arthur, Millpitas resident and veteran of the US Navy, remarked positively on the city's recent Veterans Day ceremony, stating it was one of the finer such events. He thanked the community band, the Veterans Commission, Recreation & Community Services staff led by Renee Lorentzen, and wanted to recognize them. He mentioned the Mayor's comment about flyover with his unit, and felt the Mayor's performance was superb at the ceremony. Bravo zulu (i.e. well done).

Mayor Tran thanked Mr. Arthur for his service and also thanked City staff for great work on veterans celebrations this year.

Rob Means, resident, discussed outreach for PRT (personal rapid transit).

Jackie Romero, resident, thanked the City Council for saving the children's theatre program. She was glad some of the youth were able to perform at Veterans luncheon the previous Saturday.

Tom Valore, resident, attended the grand opening of the new Floor & Decor store recently. He noted one lucky local resident won a brand new truck in a drawing.

Voltaire Montemayor, resident, spoke of his father and uncle, and could invite more veterans to attend the celebration next time.

#### ANNOUNCEMENTS

City Attorney Chris Diaz announced that one item was scheduled for a public hearing on this date (regarding 2001 Tarob Court development) but the applicant withdrew the reason for the request for exception so no public hearing was needed and the matter was on consent, as item no. C9.

Mayor Tran proposed for the next City Council meeting in December to place an item on the agenda related to the Sister City relationship with the city of Dagupan, Philippines to allow for a vote to renew the agreement and relationship anew.

A motion was made by the Mayor to put it on the December 3, 2019 agenda. Mr. Diaz said there could be no voting at this meeting while comments could indicate if the rest of the City Council wanted it on the next agenda. Four members were generally in favor.

Councilmember Nuñez asked if the agenda item was to bring back discussion of all of the lapsed Sister Cities to the Council. Mayor Tran answered that it had to do with Milpitas peoples' desire and that was known among the Filipino community. Mr. Nuñez wanted the report back from the Economic Development Director, who had been tasked to report on Sister Cities of Milpitas, status, update, timeline, etc.

Vice Mayor Dominguez wished to know the goals of Sister City relationships, the idea of trade, and commented on the Rules Subcommittee and how Council would follow agenda regulation. This topic was not the no. 1 priority, she felt, so she was not sure it must come back at the first meeting in December. Bring a full report back when staff was ready with complete information.

Councilmember Montano wanted to move ahead with what the Mayor asked, on the next agenda.

Next, Mayor Tran spoke of serving with two Vice Mayors since he took office as Mayor. He wanted to propose a new agenda item for the one year anniversary of the Vice Mayor and to consider a vote to have another Vice Mayor in the coming year.

Councilmember Montano liked that idea while discussing the idea of shared leadership.

Councilmember Phan asked for comment from the current Vice Mayor.

Vice Mayor Dominguez said there was no place she'd rather serve than with the team on the dais. She was open to the idea of changing the Vice Mayor. She thanked Councilmembers Nuñez and Phan for putting her in there last year. She would be honored to give the title to somebody else, and it was about shared leadership and shared values.

Councilmember Nuñez said he continued to do what the city had asked, by the Council or City Manager or others. He admired anyone who ran for office.

Mayor Tran asked Councilmembers Phan or Nuñez to consider serving as the Vice Mayor of Milpitas to share the opportunity in the next year. He wanted to have this on a future upcoming meeting agenda and specifically on the first meeting in December's agenda.

#### **ANNOUNCEMENT OF CONFLICT OF INTEREST AND CAMPAIGN CONTRIBUTIONS**

City Attorney Diaz asked Councilmembers if they had any personal conflicts of interest or reportable campaign contributions. By roll call, none were reported.

#### **APPROVAL OF AGENDA**

Motion: to approve the City Council meeting agenda, as amended

Vice Mayor Dominguez stepped away from the dais and left the Council Chambers.

Mayor Tran asked to remove items no. C4 and C9 for separate votes.

Councilmember Phan asked to move items no. 14 - 18 (Commission work plans) onto consent.

Motion/Second: Councilmember Phan/Councilmember Nuñez

Motion carried by a vote of:

AYES: 4  
NOES: 0  
ABSENT: 1 (Dominguez)

## CONSENT CALENDAR

Motion: to approve the consent calendar including agenda items no. C1 – C3, C5-C8 and the added items no. 14 – 18

Mayor Tran requested to remove items no. C4 and no. C9 from consent in order to have a separate vote on those items.

Motion/Second: Councilmember Nuñez/Councilmember Phan

Motion carried by a vote of: AYES: 4  
NOES: 0  
ABSENT: 1 (Dominguez)

- C1. Council Calendars Received City Council calendars for November and December 2019.
- C2. Meeting Minutes Approved City Council meeting minutes of November 5, 2019.
- C3. Resolution Adopted Resolution No. 8921 authorizing access to state and federal level Summary Criminal History Information for employment, certification, and licensing purposes.
4. Resolution Mayor Tran asked for a separate vote on this agenda item.
- Motion: to adopt Resolution No. 8922 approving a Site Development Permit to develop a 5,807-square foot, one-story, single-family residence and certain accessory structures; and a Minor Site Development Permit to allow a portion of the accessory dwelling unit to be located within the front half of the property on a vacant 1.27-acre hillside lot at 898 Calaveras Ridge Drive
- Motion/Second: Councilmember Nuñez/Councilmember Montano
- Motion carried by a vote of: AYES: 3  
NO: 1 (Tran)  
ABSENT: 1 (Dominguez)
- C5. Agreement with Union Pacific Railroad Approved and authorized the Interim City Manager to execute a Public Highway At-Grade Rail Crossing Agreement with Union Pacific Railroad Company for South Milpitas Boulevard rail crossing and signal improvements and authorized payment to Union Pacific Railroad not to exceed \$750,000 for the cost of the improvements.
- C6. FY 2019-20 1<sup>st</sup> Quarter Reviewed the FY 2019-20 Quarterly Financial Status Report for the quarter ending September 30, 2019.
- C7. Additional COPS grant Accepted the additional FY 2019 COPS grant funding in the amount of \$63,658.27 for the Police Department, approved the addition to the spending plan and approved a budget amendment.
- C8. 2 Fee Waivers Waived the fees to rent the Milpitas Community Center Auditorium for the Kiwanis Club of Milpitas (\$1,200) and for the non-profit organization Pragnya (\$1,000).
9. Follow-up Report on 2001 Tarob Court Mayor Tran asked for a separate vote on this item.
- Motion: to receive a follow-up report from staff on the affordable housing requirements for a 40-unit residential condominium building located at 2001 Tarob Court
- Motion/Second: Councilmember Nuñez/Councilmember Montano
- Motion carried by a vote of: AYES: 3  
ABSTAIN: 1 (Tran)  
ABSENT: 1 (Dominguez)

## **PUBLIC HEARINGS**

### **10. Ordinance No. 38.839 – Massage Regulations**

Senior Planner Rozalynne Thompson addressed the City Council expressing three purposes for the proposed ordinance on massage establishment regulation: (1) to comply with state law, (2) to seek consistency, and (3) for language and technical edits.

The public hearing was opened for any comments from the public.

Voltaire Montemayor, resident, was not sure of massage establishments.

Motion: to close the public hearing, following one speaker

Motion/Second: Councilmember Phan/Councilmember Nuñez

Motion carried by a vote of: AYES: 4  
NOES: 0  
ABSENT: 1 (Dominguez)

City Attorney Diaz read aloud the title of Ordinance No. 38.839, “An Ordinance of the City Council of the City of Milpitas Amending Milpitas Municipal Code Title XI (Zoning, Planning and Annexation), Chapter 10 (Zoning Relating to Massage Establishments).”

Motion: to waive the first reading beyond the title and introduce Ordinance No. 38.839

Motion/Second: Councilmember Nuñez/Councilmember Phan

Motion carried by a vote of: AYES: 4  
NOES: 0  
ABSENT: 1 (Dominguez)

### **11. Resolution to Update TASP TADIF fees**

First, Mayor Tran re-opened the public hearing.

Vice Mayor Dominguez returned to the dais shortly after discussion of this agenda item began.

Transit Area Specific Plan (TASP) Manager and consulting planner Kevin Riley gave a presentation to Council following the original report and public hearing on this topic held in October. He defined new proposed Tiers 1, 2 and 3 for development project fees based on dates when building permits were issued for a project.

Planning Director Ned Thomas discussed the purpose of TASP Development Impact Fees, as a partnership with the development community and described the Basic Infrastructure Plan (BIP).

Mr. Riley reviewed with a chart overhead listing the BIP costs and overall increases, at 23.5% in total over the past five years for residential development. He explained the TASP update and Fee Nexus study, as those related to needed infrastructure and costs. Mr. Riley identified one correction in one figure of fees, stating the amount of \$40,487 per unit as the correct figure for residential development in section 4 of the Resolution for adoption.

Mayor Tran called speakers to the podium.

Kyle Zaylor of the Core Companies of San Jose had a project on Main Street in the TASP area and was soon to pull permits to build the approved project. He said his project was in the pipeline for over three years, while it was approved by the City last year. He spoke of costs of the project, which would be burdensome to accept the new TASP fees, despite the tiered fee structure staff proposed to the City Council. He noted that deferred payment of fees could be a significant measure in making the project economically viable.

Voltaire Montemayor, resident, spoke of permitting, development time, effect of additional costs on the developer, city needed impact fees.

Councilmember Nuñez asked how many projects were in the pipeline, and Mr. Riley replied that twelve were entitled, representing 1,964 units, that had not yet obtained permits.

Councilmember Phan appreciated staff efforts to phase in the fees, as that was very helpful to developers. He wanted Tiers 1 and 2 to be included into the deferral of payments, and then wanted to make a motion.

Councilmember Montano referred to a letter the City Council had received from the Core Companies that requested to defer payment of the new TASP fees. She agreed with Mr. Phan and what he requested regarding the tiers.

Councilmember Nuñez agreed with Councilmember Phan, with a payment deferral not having a significant negative impact to developments in the TASP, and would second the motion.

Motion: to adopt Resolution No. 8923 authorizing the City Manager to adjust the Transit Area Development Impact Fees (TADIF) based on cost estimates for infrastructure items listed in the TASP Basic Infrastructure Program (BIP), and to establish a graduated fee program and the deferral of TADIF payments until occupancy, with these provisions in effect for 12 months from the date of adoption

and including an amendment with Tiers 1 and 2 allowed to defer payments until obtaining an Occupancy Permit, for 12 months from the date of adoption

Motion/Second: Councilmember Phan/Councilmember Nuñez

Motion carried by a vote of: AYES: 3  
NOES: 1 (Dominguez)  
ABSTAIN: 1 (Tran)

At 9:58 PM, Vice Mayor Dominguez left the dais.

## **LEADERSHIP**

### **12. Facility Use Manual**

Recreation Director Renee Lorentzen described the proposed updated Facility Use Manual. On April 30, City Council requested that staff return with modifications to the manual, and bring updates to respond to Council direction regarding the use of facilities by Councilmembers. She highlighted the changes, wherein Councilmembers would be added to the "Priority 1" group of facility users. A new City Council Facility Use Request Form would be developed and used for any Council use of facilities or staff time needed.

Councilmember Montano asked how many times a Councilmember could ask for use and staff replied there were no restrictions proposed. Ms. Montano suggested to put something in there. Ms. Lorentzen explained why the manual edit was suggested, based on last year's discussion at the Council's budget meeting.

Councilmember Nuñez felt there should be a budget every time a request for an event came to the Council, at that time, and not as staff proposed at the budget mid-year report.

Councilmember Phan would like scrutiny applied to any application for use of facilities, as for Council, and to have a level playing field.

Councilmember Montano would not support this proposal. The City put on a lot of programs already, and did not need to add Council ones to that. There was the question of campaigning at these type of events, and getting their names out there in the community.

Mayor Tran asked for public comments.

Resident Jackie Romero, of Milpitas Parent Coalition, said one member was concerned about this issue. The concern was about an alleged effort by two Councilmembers to move out the Children's Theatre from the Community Center Auditorium. She was concerned about the Priority levels and change suggested by staff.

Mayor Tran responded to her comments.

Councilmember Nuñez needed to gather input from the community. Find out about the 40+ events that Recreation was doing, and find out what the community wanted the City to do. This was a good attempt at the manual update, while there may be a better way to do it, along with community input.

Councilmember Phan felt there was a way to address transparency and assure a fair process, without Councilmembers competing with community requests. It was okay for the Council to be lower on a priority level than other parts of the community.

Mayor Tran commented about the proposed manual changes. He looked forward to Councilmembers hosting their own events for the community. Mr. Tran wanted to make a motion to approve the manual.

Councilmember Montano commented further, and remained not in favor of manual changes.

Councilmember Nuñez felt that this was just a first shot, similar to the next agenda item. He suggested combining agenda items no. 12 and 13 together, and to bring those back at a future Council meeting.

Vice Mayor Dominguez returned to the dais at 10:39 PM.

Mayor Tran invited comments and resident Voltaire Montemayor said nothing was wrong to add the update to the manual.

### **13. Policy on Training and Events**

Assistant City Manager Ashwini Kantak said staff sought feedback from the Council on the draft policies for events and training. Feedback was needed on the types of events, amounts, costs, etc. on the two policies – one for Council training opportunities and another one on Council events.

For trainings, she presented a draft policy for training activity for the Mayor and Councilmembers, with \$5000 for each member in the City's adopted budget.

For events, the new policy would allow for individual Councilmembers to potentially hold events at city facilities, in order to reach out to and meet with constituents.

Staff proposed an allocation of \$10,000 for non-profit group fee waivers or donations, and then allow \$3000 allocated for each City Councilmember (for a total of \$25,000 as allocated in the FY 2019-20 budget). Funds could be for facility use, refreshments, contractual services, but no gifts or alcohol. Ms. Kantak displayed a list of topics for input on an events policy (7 bullets).

Vice Mayor Dominguez wanted all travel detail information made available to the public, in a report made available online. On the number of events for each Councilmember, she wanted to put in a cap of 7 – 10 per year for each member. She brought up the use of the City logo and city imagery, related to campaigning. She spoke of sponsorship and the City logo on banners with no allowance for campaigning. Her view was that staff support should be limited for any events, to avoid giving them extra work.

Ms. Dominguez wanted a report to include the number of times the local Assembly member partnered with the City or City Councilmember.

Councilmember Phan asked if this matter came to the Rules Subcommittee. Ms. Kantak replied this had started at the budget discussion time, money was in the budget, so now the policy was

requested for Council input. Mr. Phan stated he was completely indifferent on the topic of this one and the prior item on the agenda.

No action was taken, while staff received the feedback stated by Councilmembers and could return in the future with updated policies along with the proposed updated Facilities Use Manual.

## **REPORTS**

No reports were made by the Mayor and Councilmembers of outside Committees, Commissions and outside bodies to which Councilmembers were assigned.

## **COMMISSION WORK PLANS 14. – 18.**

Five Milpitas Commission work plans were approved, after items no. 14 – 18 were added to the consent calendar regarding the Arts, Library, Senior, Community Advisory and Planning Commissions.

## **NEXT AGENDA**

### **19. Preview next agenda**

Council received a list of anticipated agenda items for the December 3, 2019 City Council meeting. City Manager Steve McHarris stated he would send the line-up for the next few City Council meetings to the City Council, as the end of the calendar year approached.

## **ADJOURNMENT**

Mayor Tran adjourned the meeting at 11:08 PM in honor of Pastor Richard Mok, a Milpitas community member who had recently passed away.

**The foregoing minutes were approved by Milpitas City Council on December 3, 2019.**

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**Mary Lavelle**  
**Milpitas City Clerk**